

NO. 27485

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAII

FRED LAND, JR., Petitioner-Appellant, v.  
STATE OF HAWAII, Respondent-Appellee

APPEAL FROM THE CIRCUIT COURT OF THE FIFTH CIRCUIT  
(S.P.P. No. 05-1-0002)

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STATE OF HAWAII

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SUMMARY DISPOSITION ORDER

(By: Recktenwald, C.J., Nakamura and Fujise, JJ.)

Petitioner-Appellant Fred Land, Jr. (Land) appeals the Findings of Fact; Conclusions of Law; Order denying Petitioner Fred Land Jr.'s Rule 40, HRPP, Petition for Post-Conviction Relief, filed on August 9, 2005 in the Circuit Court of the Fifth Circuit.<sup>1</sup>

On appeal, Land contends (1) the Hawaii Paroling Authority erred by revoking his parole in Criminal No. 98-0090 because his parole could not be revoked pursuant to Hawaii Revised Statutes (HRS) § 353-66(f) (Supp. 2002) for a first-time possession or control of a dangerous drug and (2) he received ineffective assistance of counsel in Criminal No. 04-1-0094.

Upon careful review of the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised by the parties, we resolve Land's points of error as follows:

(1) Land's parole was revoked after he pleaded guilty to violations of his terms of parole: "possession and control of methamphetamine" on September 15, 2003 and October 17, 2003 and failure "to report" on October 28, 2003. Thus, Land's parole was not revoked solely for a first-time possession or control of a dangerous drug and the Hawaii Paroling Authority did not improperly revoke Land's parole.

(2) On October 12, 2004, Land pleaded guilty to Assault Against a Police Officer in the Second Degree, in violation of HRS

<sup>1</sup> The Honorable George M. Masuoka presided.

§ 707-712.6 (Supp. 2007) and Resisting Arrest, in violation of HRS § 710-1026 (1993 and Supp. 2007). Land acknowledged that his counsel reviewed his guilty plea agreement with him, including the government's evidence, his possible defenses and the facts the government must prove, the rights he was giving up by pleading, including his right to appeal, and the possible penalties that might be imposed by the court. Land also acknowledged that he was satisfied with what his counsel did for him. The exhibits Land presented below fail to show the prosecution lacked sufficient evidence to convict him of the crime of Assault Against a Police Officer in the Second Degree. Therefore, Land has failed to show that counsel in Cr. No. 04-1-0094 was ineffective in advising him to plead guilty to that offense.<sup>2</sup>

Therefore,

IT IS HEREBY ORDERED that the Findings of Fact; Conclusions of Law; Order denying Petitioner Fred Land Jr.'s Rule 40, HRPP, Petition for Post-Conviction Relief, filed on August 9, 2005 in the Circuit Court of the Fifth Circuit, is affirmed.

DATED: Honolulu, Hawai'i, May 30, 2008.

On the briefs:

Fred Land, Jr.,  
Petitioner-Appellant, pro se.



Chief Judge

Lisa M. Itomura and  
Diane K. Taira,  
Deputy Attorneys General  
for Respondent-Appellee.



Associate Judge

Richard K. Minatoya,  
First Deputy Prosecuting  
Attorney,  
County of Kaua'i,  
for Respondent-Appellee.



Associate Judge

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<sup>2</sup> Although Land contended in the circuit court that his counsel was ineffective at sentencing, Land did not provide any meaningful argument regarding that contention in his opening brief and thus it is deemed waived for the purposes of this appeal. Hawai'i Rules of Appellate Procedure Rule 28(b)(7).